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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,769	04/16/2004	James R. Anthony	2835-74916	8807
23643 7590 12/09/2008 BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204				
EXAMINER MACARTHUR, VICTOR L				
ART UNIT 3679		PAPER NUMBER		
NOTIFICATION DATE 12/09/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

indocket@btlaw.com

Office Action Summary

Application No.

10/825,769

Applicant(s)

ANTHONY ET AL.

Examiner

VICTOR MACARTHUR

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s) Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s) Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “means for protecting” (claim 51), “means for allowing” (claim 52), “means for distinguishing” (claim 53), and “means for thermally insulating” (claim 54) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Every element recited in the claims must be described in the written description with reference characters regarding the drawings; or those features must be deleted from the claims. The following claimed elements must be described in the written description:

- “means for protecting” (claim 51)
- “means for allowing” (claim 52)
- “means for distinguishing” (claim 53)
- and "means for thermally insulating" (claim 54)

Claim Objections

The claims are objected to because of the following informalities:

- The phrase(s) “means for protecting” (claim 51), “means for allowing” (claim 52), “means for distinguishing” (claim 53), and "means for thermally insulating" (claim 54) are not recited in the specification. Furthermore, it is unclear which drawing elements, if any, are represented by the above-mentioned phrases.
- Claims 46-50 and 56-60 are objected to for the relative terminology therein. The limitation “resemble” is relative and a matter of opinion, which differs from person to person. What may resemble a dog’s ear to one person may only resemble a cat’s ear

to another, or even not resemble an ear at all to another. Applicant must clearly define the meets and bounds of the invention in the claims. For purposes of examination the term “resemble” must be interpreted very broadly. Note that applicant’s own invention also reads on the claims in only a broad sense since it does not have hair and or pliable skin (as a dog would).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 51-54 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite “means for protecting” (claim 51), “means for allowing” (claim 52), “means for distinguishing” (claim 53), “means for thermally insulating” (claim 54). Applicant has not pointed out where the amended claim is supported, nor does there appear to be a written description of the claim limitations in the application as filed such that this newly added limitation constitutes new matter. That is to say that the above limitations are not recited in the application as originally filed. Note that even the present application fails to provide antecedent basis for the terms in the written description (see response to arguments below).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(h) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

FIG. 39

FIG. 38

Claim 41. Anthony discloses (fig.38) a coupling device, the coupling device comprising:
a frame (362 and 365) defining a void (void in 362 receiving left portion of 363) therein and a
first opening (bottom opening in 362) to the void, and further defining a mouth (368) that is
separate from the void, the mouth defining an opening (right opening of 368) thereto, a lever
(363) movably mounted to the frame at a mounting location (378), the lever having a distal end

(right portion of 363) that is movable relative to the frame between a first position (similar to fig.44) in which the distal end of the lever covers the opening of the mouth and a second position (similar to fig.35) in which the distal end of the lever does not cover the opening of the mouth, the lever defining a manipulation portion (bottom portion of 363 between 378 and 380) between the mounting location and the distal end, the manipulation portion responsive to a direct pushing force (F) applied thereto to extend through the first opening and into the void when the lever moves from the first position to the second position, and a biasing member (386) positioned between the lever and the frame, the biasing member biasing the lever toward the closed position. Furthermore:

- The prior art coupling device is fully capable of attaching to an anchor member (e.g., to a hook via 389 for instance).

Claim 42. Anthony discloses the coupling device of claim 41 wherein the frame further defines a second opening (upper opening in 362) separate from the mouth (in that the mouth is below the upper opening in 362), and wherein the distal end of the lever extends out of the second opening (similar to fig.39) when the lever is moved from the first position to the second position.

Claim 44. Anthony discloses the coupling device of claim 41 further comprising a cover (361) configured to receive the frame and lever therein, the cover defining a mouth (371) that aligns with the mouth defined by the frame when the frame is received within the cover.

Claim 45. Anthony discloses the coupling device of claim 44 wherein the cover defines an opening (369) through which the manipulation portion of the lever is accessible (via 371 with any long narrow tool such as a screw driver, punch, etc.)

Claim 46. Anthony discloses the coupling device of claim 44 wherein the cover comprises a plurality of surfaces that are configured to resemble corresponding portions of a head of an animal.

Claim 47. Anthony discloses the coupling device of claim 46 wherein the plurality of surfaces are configured to resemble corresponding portions of a head of a dog.

Claim 48. Anthony discloses the coupling device of claim 44 wherein the plurality of surfaces are configured to resemble one or more of a pair of ears, a pair of eyes (377), a nose (354), a nose ridge (355), whisker indentations, a rounded head and a rounded forehead, of the animal.

Claim 49. Anthony discloses the coupling device of claim 48 wherein mouth defined by the cover is configured to resemble a mouth of the animal and the distal end of the lever is configured to resemble a tooth of the animal.

Claim 50. Anthony discloses the coupling device of claim 49 wherein the plurality of surfaces are configured to resemble corresponding portions of a head of a dog.

Claim 51. Anthony discloses the coupling device of claim 41 further comprising means (354) for protecting the lever from dust and chipping.

Claim 52. Anthony discloses the coupling device of claim 41 further comprising means (365) for allowing a user to simultaneously maintain a grip on the coupling device while moving the lever to the open position.

Claim 53. Anthony discloses the coupling device of claim 41 further comprising means (354) for distinguishing by either or both of feel and sight the coupling device from another device.

Claim 54. Anthony discloses the coupling device of claim 41 wherein the frame and the lever comprise a frame assembly, the frame assembly being formed of metal, and further comprising means (361, Kevlar, para.0069) for thermally insulating the metal of the frame assembly.

Claim 55. Anthony discloses the coupling device of claim 41 further comprising a mounting assembly (389) mounted to the frame and configured to attach to any of a flexible, semi- flexible, semi-rigid and rigid elongate member.

Claim 56. Anthony discloses (fig.38) a coupling device, the coupling device comprising: a frame (362) defining a mouth (368), the mouth defining an opening thereto, a lever (363) movably mounted relative to the frame and having a first position in which the distal end of the lever covers the opening of the mouth and a second position in which the distal end of the lever does not cover the opening of the mouth, the lever having a manipulation portion (bottom portion of 363) responsive to a pushing force applied directly to the manipulation portion to move the lever between the first position and the second position, a biasing member biasing the lever toward the first position, and a cover (361) configured to receive the frame, lever and biasing member therein, the cover defining a mouth (371) that aligns with the mouth defined by the frame when the frame is received within the cover, the cover further defining a plurality of surfaces that are configured to resemble (in as much as applicant's own invention does) at least a nose, eyes and ears on a head of a dog. Furthermore:

- The prior art coupling device is fully capable of attaching to an anchor member (e.g., to a hook via 389 for instance).

Claim 57. Anthony discloses the coupling device of claim 56 wherein the plurality of surfaces are configured to further resemble one or more of a pair of a nose ridge, whisker indentations, a rounded head and a rounded forehead, of the dog.

Claim 58. Anthony discloses the coupling device of claim 57 wherein the mouth defined by the cover is configured to resemble a mouth of the dog and the distal end of the lever is configured to resemble a tooth of the dog.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anthony (US 2003/0030310) in view of Lewis (U.S. Patent 3,083,431).

Claim 43. Anthony discloses the coupling device of claim 41 wherein the lever further defines a bias engagement portion (385), the biasing member positioned between the frame and the bias engagement portion of the lever. Anthony's location of the bias engagement portion biases towards the closed position as does the applicant's. However Anthony's location of the bias engagement portion is not located between the mounting location and the distal end. Lewis teaches that it is extremely well known in the coupling device art to position a bias engagement portion (portion of 7 engaging 18) to be located between a mounting location (9) and a distal end (end of 7 opposite from 9). One of ordinary skill would easily recognize that the Lewis position

reduces the number of parts necessary since Anthony's element 365 would no longer be necessary; thus simplifying construction and reducing cost. It has generally been recognized that the rearranging of parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Furthermore, the applicant has failed to demonstrate criticality by any showing of unexpected result derived from locating the engagement portion between the mounting location and distal end over any other position that biases to the closed position. Wherein a specific limitation has no criticality, case law can be relied upon as the sole rationale in an obviousness rejection. See MPEP 2144.04. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Anthony's engagement portion to be located between the mounting location and distal end, as taught by Lewis, for reducing the number of parts, simplifying construction and reducing cost; and further since the limitation has no criticality and has thus been established by the case law cited above to be an obvious design consideration within the skill of the art. "[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8." In re KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007).

Claims 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (U.S. Patent 1,273,717).

Claims 59 and 60. Anthony discloses the coupling device of claim 56, wherein the cover is metal (para.0078) but does not disclose that the metal is colored with black paint. The examiner takes Official Notice that black paint is very well known in the art to slow corrosion of

metal parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Anderson metal to be painted black for the benefit of slowing corrosion. The examiner's Official Notice statement that "black paint is very well known in the art to slow down corrosion of metal parts" (see rejection of claim 40 in the Office Action mailed 5/30/2007) is now taken to be admitted prior art because applicant's response (see applicant's remarks filed 10/30/2007) has failed to traverse the examiner's assertion of Official Notice. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

Note that, even though not present in the current version of claims, the examiner's Official Notice statement that "it is very well known in the art to use illumination devices such as LED (light emitting diodes) for the benefit of facilitating nighttime use" (see rejection of claim 27 in the Office Action mailed 5/30/2007) is now taken to be admitted prior art because applicant's response (see applicant's remarks filed 10/30/2007) has failed to traverse the examiner's assertion of Official Notice. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

Response to Arguments

Applicant's arguments with regard to the claim rejections have been fully considered but they are not persuasive.

Regarding 112 1st new matter rejections, the applicant argues that the "means for..." limitations rejected by the examiner actually find antecedent basis in the originally presented application, and therefore are not new matter. This is not persuasive. The rejected "means for..." limitations are not expressly recited in the written description (originally submitted or

otherwise). If applicant intends for the new claim terminology to refer to originally presented elements described by differing terminology then the written description must be amended to specifically describe what elements of the originally submitted drawings and written description correspond to the new terminology. Applicant's argument cannot replace a clear written description that provides antecedent basis for the new claim terms.

Regarding the prior art rejections, the applicant argues that Anthony does not disclose "a frame defining a void therein and a first opening to the void" as required by claim 41. This is not persuasive. Anthony discloses a frame (362 and 365) defining a void (void in 362 receiving left portion of 363) therein and a first opening (bottom opening in 362) to the void.

Applicant argues that Anthony does not disclose "a lever defining a manipulation portion between the mounting location and the distal end, the manipulation portion responsive to a direct pushing force applied thereto to extend through the first opening and into the void when the lever moves" as required by claim 41. This is not persuasive as follows:

- Anthony discloses a lever (363) defining a manipulation portion (bottom portion of 363 between 378 and 380, actable upon by force F) between the mounting location (378) and the distal end (right portion of 363), the manipulation portion responsive to a direct pushing force (F) applied thereto to extend through the first opening (bottom opening in 362) and into the void when the lever moves from the first position to the second position.
- The fact that the Anthony lever can be manipulated via depression of (365) does not detract from its capability of being manipulated by application of force (F) as shown in the marked-up figure above.

- If applicant means to argue that cover (361) has a solid bottom which prevents applying a force (F) to the manipulation portion (bottom portion of 363 between 378 and 380) then note the following:
 - Claims 41 and 56 do not require a “cover” such that Anthony reads on these claims without cover (361) being installed.
 - As for the claims that do require a cover (e.g., claims, 44-50, etc.) note that even when cover (361) installed, the prior art anticipates the functional limitations since a flathead screw driver (or any other long thin prying device) could easily be inserted into the cover mouth (371) then through the first opening (bottom opening in 362) to pry on the manipulation portion (bottom portion of 363 between 378 and 380, actable upon by force F) with a force (F). Applicant has failed to prove otherwise. Note that where the prior art discloses all of applicant's **CLAIMED** product structure, any claimed functions are presumed to be inherent to that prior art structure until applicant proves otherwise with evidence in accordance with MPEP 2112.01(I). It is applicant, rather than the Patent Office, who is in the best position to obtain and test prior art products for functional capability. In other words, it is the applicant's burden to obtain the prior art of Anthony and prove that it cannot be manipulated to perform applicant's functional limitations. A showing in the prior art of all **CLAIMED** prior art structure, automatically sets forth a *prima facie* case for any claimed functions, in accordance with MPEP 2112.01(I).

Applicant argues that Anthony does not disclose "a plurality of surfaces that are configured to resemble at least a nose, eyes and ears on a head of a dog". This is not persuasive as follows:

- The limitation "resemble" is a relative matter of opinion that will differ from person to person. What resembles a dog's ears to one person may only resemble a cat's ears, or no ears at all to another. As detailed in the claim objections above, this relative scope renders the scope of the claims to be unclear. Accordingly, the scope of the term "resemble" must be interpreted very broadly for the purposes of examination. Note that applicant's own invention only resembles a nose, eyes and ears of a dog in a very broad sense (i.e., real dog ears have hair, are made of non-rigid flesh, etc. which is contrary to applicant's invention).
- Further the prior art surface presents projections and voids that resemble dog features in this broad sense, since applicant's claims fail to recite any specific degree of "resemble". That is to say, for instance, that any common projection resembles a dog's ear to at least some small degree.
- Lastly, this application is a "utility" application for a product, not a "design" application. In general terms, a "utility patent" protects article structure and the way an article is works (35 U.S.C. 101), while a "design patent" would protect the way an article looks (35 U.S.C. 171). The ornamental appearance for an article includes its shape/configuration or surface ornamentation. Utility and design patents afford legally separate protection. Accordingly, applicant cannot obtain a utility patent for a product claim based upon purely decorative features such what the product might be

perceived as resembling (e.g., a dog). If applicant truly wishes to obtain patentability based on decorative and purely ornamental features such as what a device might resemble (e.g., a dog) then such patentability should be pursued via filing of a design application.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

December 5, 2008

/Victor MacArthur/
Primary Examiner, Art Unit 3679